

Gravesham Borough Council

Issue Specific Hearing 7 (11 September 2023) – (ISH7) on the draft Development Consent Order

Examining Authority's Agenda Item / Question	Gravesham Borough Council's Response	References
1. Welcome, introductions, arrangements for the hearing		
2. Purpose of the Issue Specific Hearing		
3. ExA's Questions on the dDCO		
<p>a) Changes proposed to the dDCO since ISH2</p>	<p>Introduction</p> <p>ISH2 was on 22 June 2023. Since then, the following iterations of the draft DCO have been submitted by the Applicant:</p> <ul style="list-style-type: none"> • Deadline 1: 18 July 2023: DCO Version 3.0 • Deadline 2: 3 August 2023: DCO Version 4.0 • Deadline 3: 24 August 2023: DCO Version 5.0 <p>The changes have been listed by the Applicant in a Schedule of Changes document.</p> <p>Changes have also been proposed in respect of change notification 1 (August 2023)</p> <p>GBC has submitted comments on the DCO in the following documents:</p>	<p>[REP1-043] DCO Version 3.0</p> <p>[REP2-005] DCO Version 4.0</p> <p>[REP3-077] DCO Version 5.0</p> <p>[REP3-137] Applicant's Schedule of Changes to the draft Development Consent Order during Examination</p> <p>[AS-133] DCO Version 1.0 with changes</p>

	<p>Deadline 1: ISH2 Post Hearing Written Representations</p> <p>Deadline 3: response to Applicant's response to ISH2 (DCO) Post Hearing Submissions and ExA's Observations on Drafting.</p> <p>Those documents include GBC's comments on some of the changes made since ISH2. Points of concern on the changes include the following.</p>	<p>[REP1-236] GBC ISH2 Post Hearing Written Representations</p> <p>[REP3-167] GBC D3 submissions on the DCO</p>
	<p>Definition of "begin"</p> <p>This issue has been raised by GBC previously and was raised by GBC at ISH7, and was supported by other local authorities.</p> <p>A new definition of "begin" was introduced into article 2(1) of the draft DCO at D1.</p> <p>The difficulty that GBC has relates to the definition of "begin" in article 2(1) and its interrelationship with requirement 2 (time limits). Taken together, they mean that beginning of any of the preliminary works (such as environmental surveys, environmental monitoring or clearing vegetation) would be sufficient to satisfy requirement 2, with no obligation to carry out any other works, including material operations, by any other deadline. GBC is concerned because of the potential for continuing uncertainty over whether and when the main works will proceed and the potential impact on other developments coming forward in GBC's area. This is particularly difficult given the unusually long period in the DCO for the implementation of compulsory acquisition powers.</p> <p>For ease of reference, requirement 2, the definition of "begin" in article 2 of the dDCO and the definition of "preliminary works" in paragraph 1 of the requirements are set out below:</p>	

“Time limits

2. The authorised development must begin no later than the expiration of 5 years beginning with the date that this Order comes into force.”

““begin” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development including preliminary works (as defined in Schedule 2 to this Order), and “begun” and “beginning” shall be construed accordingly;”

““preliminary works” means operations consisting of archaeological investigations and pre-construction ecological mitigation (including in connection with those investigations or mitigation vegetation clearance), environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment for advanced compound areas, diversion and laying of underground apparatus (except any excluded utilities works) for advanced compound areas, accesses for advanced compound areas (and vegetation clearance in connection with those accesses), and the temporary display of site notices or information;”

Action point 1 in the ExA’s list of action points for ISH7 is:

“Can the local authorities provide a copy of the Swansea Bay case judgment in the Court of Appeal and cite the relevant parts it seeks to rely upon in any submissions in respect of the definition of ‘begin’ in the dDCO.”

The Swansea Bay case was not raised by GBC at the hearing, and whilst GBC supports the points made by the other local authorities about the case, it is not relied upon by GBC in principle to support its main point about uncertainty.

A copy of the judgment has been provided separately.

The underlying question in the Swansea case was whether the undertaker had done enough, in carrying out some preliminary works, to implement the DCO in accordance with the equivalent requirement to requirement 2 in the LTC DCO (time limits). The undertaker in the Swansea case argued that the relevant provision in the Planning Act 2008 (which speaks about “beginning” the authorised development) was different from requirement 2 (which speaks about “commencing” the authorised development) and that it could rely on the Planning Act provision. The crucial difference between the two was that the definition of “authorised development” as used in the requirement excluded preliminary works from its ambit whereas the definition in the Planning Act did not. In essence the court held that the DCO requirement 2 overrode the default provision of the Planning Act, and that the carrying out of preliminary works was not enough to have satisfied the requirement. GBC consider that (as in Swansea) the “authorised development” that must be carried out in order to satisfy requirement 2 should not include the carrying out of preliminary works. GBC have drafted an amendment to the DCO contained in the **Appendix** to this note. It is a simple amendment – changing the word “begin” in requirement 2 to “commence” - because “commence” is defined in paragraph 1 of Schedule 2 as excluding preliminary works.

The passage of the judgment which GBC considers to be most relevant is about what the Court considered to be the reason in policy terms for requiring implementation within a defined

timescale. In particular, GBC refers to paragraph 40 of the judgment:

“40. First, the underlying purpose of the time limits provided for by both sections 154 and 155 and by Requirement 2 is to prevent the life of an unimplemented development consent order from surviving for an unknown and possible lengthy period without a start being made on the ground. We agree with the judge’s observation at [83] that the common purpose here is “to limit the life of [the DCO] so as to encourage the early implementation of such projects and to avoid consents remaining extant indefinitely”. The provision for time limits on grants of planning permission in section 91 of the 1990 Act is for a similar purpose.”

For ease of reference, sections 154(1) and (2) of the Planning Act 2008 are set out below:

154 Duration of order granting development consent

(1) Development for which development consent is granted must be begun before the end of—

- (a) the prescribed period, or*
- (b) such other period (whether longer or shorter than that prescribed) as is specified in the order granting the consent.*

(2) If the development is not begun before the end of the period applicable under subsection (1), the order granting development consent ceases to have effect at the end of that period.

As the Court said in paragraph 7 of the judgment, the “prescribed period” in s.154(1)(a) is prescribed in regulation 6(1) of the Infrastructure Planning (Interested Parties and Miscellaneous

	<p>Prescribed Provisions) Regulations 2015 (the 2015 Regulations) which says “<i>Development for which development consent is granted must be begun before the end of a period of five years beginning on the date on which the order granting development consent is made.</i>”</p> <p>And as the Court said in paragraph 3 of the judgment:</p> <p><i>“The two vital provisions of the DCO are:</i></p> <p><i>i) The second of 42 requirements under the heading “Time limits, etc.”, which provided that “[t]he authorised development must commence no later than the expiration of 5 years beginning with the date that [the DCO] comes into effect” (Requirement 2); and</i></p> <p><i>ii) Article 2(1), which included a definition of the word “commence” providing that in the DCO it meant “begin to carry out any material operation (as defined in section 56(4) of the [Town and Country Planning Act 1990 (the 1990 Act)] forming part of the authorised development other than operations consisting of site clearance, demolition work, investigations for the purpose of assessing ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements; and ‘commencement’ must be construed accordingly”.</i></p>	
	<p>Fencing</p> <p>Schedule 2, paragraph 12 (fencing): this requirement has been amended so that if there are any proposed departures in relation to fencing arrangements from the Manual of Contract Documents for Highway Works, then instead of the local planning being consulted, only the relevant local highway authority will be consulted, in relation to highways. Elsewhere in the requirements</p>	

	<p>(eg requirements 3 and 8), similar changes have been made in relation to highways matters, but in those cases, both the LPA and the HA will be consulted. GBC would welcome an explanation as to why paragraph 12 has been treated differently.</p> <p>GBC has drafted a proposed amendment to requirement 12 in the Appendix to this note, and hopes that this issue can be settled by agreement.</p>	
	<p>“Substantially” in accordance with</p> <p>GBC notes and supports the comments made by the London Borough of Havering, whilst recognising that there must be some flexibility for changes to be made between successive versions of the control documents. GBC considers that “in accordance with” would retain flexibility.</p>	
<p>b) Changes not yet submitted but under consideration</p>	<p>Subject to seeing the detailed drafting, GBC has no comments on the three proposed changes that were described by the Applicant (protective provisions for local highway authorities, tunnel depths and waste operators’ permits.</p>	
<p>c) dDCO matters arising from other Issue Specific Hearings (ISH3-6)</p>	<p>There were some suggestions made for potential changes to the dDCO during ISH3, ISH4 ISH5 and ISH6 which GBC would support.</p>	
	<p>ISH3 Detailed design: design review panel and consultation</p> <p>GBC notes that the plans as submitted are largely illustrative and subject to submission of final designs as per Requirement 3 to Schedule 2 of the draft Development Consent Order. There may therefore be detailed changes permissible under Limits of Deviation and which accord with adopted Design Principles whereby outcomes may differ. GBC also notes that there are a</p>	

	<p>number of sensitive areas where the submitted drawings are unclear or there has yet to be agreement with third parties on a final design solution which could have implications in terms of Green Belt openness and purposes.</p> <p>On design, GBC would like consideration to be given to alterations to requirement 3 (detailed design) so that they reflect the drafting of the equivalent provision in the A57 Link Roads DCO 2022. Draft provisions are set out in the Appendix to this note. They require advice to be taken from the Design Council's Design Review panel and consultation with the relevant planning authority, local highway authority and other parties identified in the Engagement and Communications Plan that forms part of the outline LEMP.</p> <p>The ExA recommended the inclusion of these paragraphs on the A57 Order, following the previous precedent of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, and National Highways accepted the recommendation. GBC understands that the A57 case, like the LTC, involved green belt land and that there were similar concerns expressed by the local authorities on design issues as have been expressed by GBC.</p> <p>GBC also suggest a requirement for a submission of a report to the Secretary of State demonstrating that the consultation mentioned above about detailed design has taken place – this is precedented in the Black Cat DCO in requirement 12(3).</p>	<p>A57 Link Roads DCO 2022</p> <p>A428 Black Cat to Caxton Gibbet DCO 2022</p>
	<p>ISH3: responsibility for maintenance of green bridges</p> <p>Although not a highway authority, GBC is concerned to ensure that there is certainty as to who is responsible for maintaining the</p>	

	<p>“green” element of the proposed green bridges in its area, and that there are no disputes between KCC and the Applicant that might lead to a failure to maintain. GBC supports KCC in its request for clarity and notes the Applicant intends to provide it in amendments to article 10 of the DCO. GBC will comment on the drafting after D4 if necessary.</p>	
	<p>ISH3, ISH4, ISH6: Monitoring and consequent implementation of mitigation</p> <p>GBC is concerned to ensure that proper monitoring of the operation of the scheme, not just in terms of traffic, is implemented and that if the monitoring reveals that further mitigation is required, then it is implemented. Monitoring is a significant issue for GBC, as evidenced in the LIR at paragraphs 1.22, 1.35, 3.54 , 5.4, 8.27, 12.43, 12.47 and 13.132.</p> <p>Agenda item 4(a)(v) on ISH4 was: “The Silvertown Tunnel Approach in requirement 7 of the Silvertown Tunnel Order 2018. Whether there is an alternative approach to wider impacts mitigation, for example, the approach taken in the made Silvertown Tunnel DCO?”</p> <p>A number of statutory IPs, including GBC, proposed or supported the inclusion of a provision similar to Silvertown in this DCO. GBC made reference to Silvertown in its LIR at paragraphs 1.22, 13.41 onwards and 13.141.</p> <p>One of the reasons given by the Applicant for not including a similar provision in this DCO was that the Applicant is different from TfL in a number of aspects, including its remit and funding proposals. GBC do not accept that by its status, National Highways are somehow exempt from being required to</p>	<p>Silvertown Tunnel Order 2018 requirements</p> <p>National Policy Statement for National Networks</p>

	<p>participate in a monitoring and mitigation scheme which relates to local traffic impacts.</p> <p>At ISH7, counsel for GBC made reference to paragraph 5.214 of the NPSNN in support of the above contention, and the response from the Applicant was that paragraph 5.214 only applies to Strategic Rail Freight Interchanges, because of the sub-heading above the preceding paragraph 5.213.</p> <p>GBC disagrees with the Applicant, and considers that the Applicant's view arises out of a wrong interpretation arising from an unclear use of sub-headings. This can be demonstrated by the replacement provisions in the emerging draft NPSNN, in which it is made quite clear that surrounding transport infrastructure is a matter for consideration in decision making on all roads DCOs – see paragraphs 5.280 and 5.281. From that, it can reasonably be surmised that para 5.214 in the existing NPS is also intended to apply to all schemes – it just happens to be the last paragraph in the particular “decision making” section, and should probably have been separated by another sub-heading.</p> <p>Also, in the case of one of the most recently made DCOs, the Applicant prays paragraph 5.214 in aid - see the following extract from the ExA's report on A47 Wansford to Sutton DCO 2023, which is the most recently made road DCO. It accurately reflects the legal opinion of the Applicant referred to. The legal opinion referred to and the relevant paragraph is 13.</p>	<p>Draft National Policy Statement for National Networks</p> <p>A47 (Wansford to Sutton) DCO ExA's report</p>
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6.3.39. The Applicant makes the point that, while the NPSNN makes reference to severance in paragraphs 3.22 and 5.205, the NPSNN is silent on the extent to which issues of severance or NMU improvement should form part of the decision making. It refers to paragraph 5.214 of the NPSNN which indicates:

"Provided that the applicant is willing to commit to transport planning obligations and, to mitigate transport impacts identified in the WebTAG transport assessment (including environment and social impacts), with attribution of costs calculated in accordance with the Department's guidance, then development consent should not be withheld. Appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure."

6.3.40. The Applicant also references paragraph 5.216 of the NPSNN relating to mitigation (see paragraph 6.2.6).

GBC have drafted an equivalent to the Silvertown requirement in the attached **Appendix**. Which includes an article establishing a Lower Thames Crossing Implementation Group. It should be noted that this is an initial draft for discussion. It has not been seen by either the Applicant or the other authorities in the time available and it is of course, as with other proposed amendments, without prejudice to GBC's overall position on the DCO.

In addition to Silvertown, there is also precedent in other NH DCOs, for "off-scheme" traffic monitoring and mitigation.

The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 contains two requirements of this nature, which GBC say could be adapted for this DCO as a possible alternative to the Silvertown approach and could be extended to cover other subject matter in respect of which GBC have concerns, for example establishment of planting. The ExA Report on the A14 DCO also refers to a monitoring and mitigation agreement between the Applicant and Cambridgeshire County Council, which GBC have not seen, and which might shed further light on the arrangements for that scheme.

[A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 requirement 17](#)

The A14 scheme is one of the more significant schemes promoted by the Applicant. GBC make this point because their understanding of submissions made at ISH3 by the Applicant's representative Dr Wright appear to suggest that the more significant the scheme, the less heed need be given to local mitigation in the planning balance.

Requirement 17 of the A14 DCO says:

Traffic Monitoring and Mitigation

"17.—(1) No part of the authorised development is to commence until written details of a traffic impact monitoring and mitigation scheme has been submitted to and approved in writing by the highway authority.

(2) The traffic impact monitoring and mitigation scheme must include—

- (i) a before and after survey to assess the changes in traffic;*
- (ii) the locations to be monitored and the methodology to be used to collect the required data;*
- (iii) the periods over which traffic is to be monitored;*
- (iv) the method of assessment of traffic data;*
- (v) control sites to monitor background growth;*

[The A14 Cambridge to Huntingdon Improvement Scheme Development](#)

	<p>(vi) <i>the implementation of monitoring no less than 3 months before the implementation of traffic management on the existing A14;</i></p> <p>(vii) <i>agreement of baseline traffic levels;</i></p> <p>(viii) <i>the submission of survey data and interpretative report to the highway authority; and</i></p> <p>(ix) <i>a mechanism for the future agreement of mitigation measures.</i></p> <p><i>(3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker.”</i></p> <p>Requirement 12A of the A14 DCO (inserted by a correction order) relates to noise monitoring and mitigation. GBC have taken that drafting and adapted it in a way which could be utilised for planting, for example – and which could be adapted further for monitoring other effects of the scheme. This suggested drafting is set out in the Appendix to this note as a proposed new article.</p> <p>Albeit on a smaller scale, a similar provision to the A14 traffic monitoring and mitigation requirement was also included in at least one other DCO. See the A303 Sparkford to Ilchester Dualling Development Consent Order 2021, requirement 20 (Traffic monitoring and mitigation in Sparkford)</p>	<p>Consent (Correction) Order 2017, article 2</p> <p>A303 Sparkford to Ilchester Dualling Development Consent Order 2021, requirement 20</p>
	<p>ISH4: A229 Blue Bell Hill</p>	

	<p>GBC notes action point 11 in the ISH7 Action Points list asking that the Applicant and undertake a workshop with KCC in respect of Blue Bell Hill and then present a joint paper on the outcomes including any agreed matters and a present a pathway to mitigating any unacceptable effects at Blue Bell Hill including bridging the current 15% funding gap in respect of the Large Local Major improvement scheme. GBC hopes that it will be able to attend the workshop.</p> <p>In its Relevant Representations, GBC took the view that the improvement works to the A229 Blue Bell Hill, which are currently the subject of a funding application to DfT by KCC as local highway authority, should be included in the DCO as associated development. GBC recognises the difficulties in this being secured in the context of the DCO application timetable and instead requests the ExA to consider a requirement in the form of a Grampian condition which would provide that the new A122 Lower Thames Crossing should not be brought into public use until the A229 improvements are open to traffic.</p> <p>GBC's suggested drafting is in the Appendix to this note. In the time available, it has not been possible to obtain the views of KCC on this but GBC wishes to assist the ExA, as requested, by putting forward suggested drafting at D4 for its consideration. GBC will discuss the drafting with KCC.</p>	
	<p>ISH5: Tunnelling: use of north portal for tunnelling works</p> <p>GBC are concerned to ensure that whether one or two TBMs are used, all the spoil is removed from the northern portal and all the</p>	

	<p>tunnelling infrastructure and equipment is brought in through the northern portal. GBC are not content with the relevant commitment in the REAC as things stand so have therefore drafted a requirement dealing with the issue, which is in the Appendix to this note.</p>	
	<p>ISH5: Tunnelling: Requirement 8 - Surface and foul water drainage</p> <p>Drainage was discussed at ISH5. In its Local Impact Report, GBC notes that rainfall runoff from the southern tunnel entrance compound will be discharged into a ditch, referred to as the western ditch, in Filborough Marshes. The ditch, and wider interconnected network of watercourses, would convey the runoff to the River Thames via an existing outfall. Impacts on baseline water quality would be prevented through provision of a treatment system at the compound that would, for example, remove suspended sediments and chalk fines. The ditches highlighted are part of the Thames Estuary and Marshes Ramsar ditch network. GBC understand that the discharge would be subject to an environmental permit but considering the sensitive and international importance of the Ramsar ditch network, are concerned about what happens if there is an extreme weather event.</p> <p>It is noted that in the Stonehenge DCO the written details of the surface and foul water drainage system includes a requirement for the provision of details about the management of flood risk. GBC considers that a similar requirement is appropriate in this case in order to meet GBC's above concern, and an amended requirement 8 is in the Appendix to this note.</p>	<p>A303 (Amesbury to Berwick Down) Development Consent Order 2023 requirements</p>

	<p>ISH4: Minimisation of length of road closures</p> <p>At ISH4, the proposed lengthy closure of Brewers Road was mentioned by GBC as a particular issue and there was a discussion about whether there should be a requirement on the Applicant to ensure that the length of road closures be minimised so far as reasonably practicable.</p> <p>GBC acknowledges that the Outline Traffic Management Plan deals with this issue to some extent but has proposed changes to it in a separate note in response to the ExA's action points.</p>	
	<p>ISH6: Green bridges</p> <p>The width of green bridges was raised in ISH6. GBC considers that the widths of the Thong Lane South and Brewers Lane green bridges should be greater. GBC is in discussions with the Applicant about whether there are any physical constraints which prevent widening. At ISH6, the Applicant mentioned that at Brewer's Lane there were land take issues, and that either (a) the Order limits would need to be adjusted to the east, bringing in new land take or (b) SSSI land to the west. GBC acknowledges that it would be counterproductive for the latter to happen, but asks that the Applicant be requested to investigate the former and other options as soon as possible, given the stage reached in the Examination. A more innovative design could be brought forward, for example a bridge could have the existing proposed width at its connection to the SSSI but widen out as it crosses the A2, providing more space for greening including refugees – for an example, see the proposal in Canberra: https://www.designboom.com/architecture/cx-landscape-ribbons-of-life-living-bridge-canberra-australia-06-27-2019/</p>	

	<p>GBC believes that there would be no changes necessary to the DCO itself in order to accommodate the widenings but there would need to be changes to the Design Principles Document (which sets out minimum widths and the purposes and layout of the green bridges) and to the engineering drawings and sections, and the general arrangement drawings. If further land take is required (which may be the case at Brewers Road), GBC acknowledges that there would need to be a change application. There would need to be changes to the plans and book of reference and other documents.</p>	
	<p>ISH6 Thong Lane Car Park</p> <p>This was intended to be raised at ISH 6 but the agenda item was not reached. GBC's preference is that the car park be removed from the works because of the potential impact of additional vehicular traffic. GBC considers that the car park will draw traffic and if full, generate fly-parking, and Thong Lane is very narrow.</p> <p>This would be achieved by the removal of Work No. 1P from Schedule 1 to the Order, and changes to various other documents such as the works and engineering plans and design principles document.</p> <p>If the ExA is not minded to agree with the removal of the car park, then GBC would want the DCO and design principles document to be changed in order to give GBC greater control over the extent and type of development that can take place at the car park, and the operational hours etc. As GBC understands it, the design principles, as a minimum, require the car park to contain a kiosk, toilets, changing and storage facility and an</p>	

	<p>area for cycle hire and cycle washing and provision for horsebox parking with suitable surfaced parking for 10-12 horseboxes. The ancillary works provisions in Schedule 1 to the DCO combined with the wide wording in the Design Principles Document means that other “facilities” including buildings, could be brought forward under the DCO.</p>	
	<p>Chalk Park limits of deviation</p> <p>The works to create Chalk Park are contained in draft DCO v.5.0 August 2023 (REP3-077) are included under Work OSC4. This states: Work No. OSC4 – as shown on sheets 11 and 13 of the works plans and being the implementation of new recreational site, to include— (a) the establishment of a hilltop landform; and (b) the creation of landforms and associated landscape.</p> <p>Article 6(2)(b) and (c) of the draft DCO purport to set vertical limits of deviation for Works No. OSC4(a) and OSC4(b). OSC4 is the implementation of new recreational site, to include (a) the establishment of a hilltop landform; and (b) the creation of landforms and associated landscape at Chalk Park.</p> <p>The limits of deviation are expressed as allowing a vertical deviation from the levels shown on the engineering drawings and sections to a maximum of 2 metres upwards or 2 metres downwards for the hilltop landform and 5 metres upwards or downwards for the hilltop landform. However, there are not levels shown on the relevant engineering drawings and sections (REP3-037), so it is impossible to know how high the works could be, and the plans don’t appear to distinguish between</p>	

	<p>OSC4(a) and OSC4(b). Given the nature of these works, it may be inappropriate to use sections, so a reference to existing ground levels, in turn referenced to Newlyn datum may be a better option. The Applicant has acknowledged this is an issue and GBC waits the solution. Meanwhile, as a holding exercise, an amendment to article 6 is contained in the Appendix.</p> <p>GBC requests that the applicant indicate where the relevant plans etc. are located, given the potential impact can only be assessed once the baseline scheme is understood, along with the implications of the proposed limits of deviation. In addition, the Applicant is asked to direct GBC to any photomontages and assessment providing information on the visual impact of the Chalk Park works, having regard to the upper and lower parameters set out within the limits of deviation.</p> <p>It would be helpful if this also included an assessment of impact of the proposed earthworks when viewed from the rear of the adjoining properties on the east side of Thong Lane.</p> <p>In addition to the above, it is noted that the works here are extensive and exceed 1 hectare in area, within EA Flood Zone 1. As the works could affect surface water drainage and run-off, which could affect adjoining land, it is assumed that some form of Flood Risk Assessment/ surface water drainage strategy will be required under the DCO at the detailed stage.</p>	
<p>d) Any other matters relating to the dDCO</p>	<p>Here, GBC sets out some of the most important outstanding concerns which it has on the drafting of the DCO. A more comprehensive list is set out in its D3 response. The points are mainly set out in the order in which they appear in that response which in turn follows the ExA's list of points for ISH2. A list of proposed amendments (including the amendments mentioned in</p>	<p>[REP3-167]</p>

the paragraphs above) to the DCO is in **Part 1 of the Appendix** to this note. GBC reserves its right to come forward with more amendments as the examination progresses.

- The discharging authority for requirements should be the LPA not the SoS. Amendments which would achieve this are in **Part 2 of the Appendix** to this note as a separate stand alone version of Schedule 2 showing only those amendments.
- If the ExA does not find favour with that suggestion, then the SoS should be required to seek the views of the LPA if an application has been made for discharge which is not in accordance with the response given by the LPA in a consultation
- Any ancillary works can be carried out outside the Order limits. GBC have examined 20 National Highways DCOs including all the most recently made ones. Only 2 (Stonehenge and M4 Smart Motorway) allow ancillary works outside the order limits. An amendment is shown in the **Appendix**
- **Monitoring:** GBC has proposed the “Silvertown” requirement and a separate requirement in the **Appendix** dealing with planting. GBC is continuing to review the control documents in the light of the Applicant’s previous response on this issue.
- **Road charging:** discounts should be available on the Dartford Crossing for GBC residents from the start of the construction period. An amendment to the DCO which in turn amends the relevant legislation (The A282 Trunk Road (Dartford-Thurrock Crossing Charging Scheme) Order 2013) has been included in the **Appendix** and the 2013 Order has been provided.
- **Art 24(2)(b):** (trees subject to tree preservation orders) - this is more a point for the Environmental Masterplan and

	<p>OLEMP: GBC is still unconvinced that the number of replacement trees has been identified.</p> <ul style="list-style-type: none">• GBC has remaining concerns about monitoring and maintenance of replacement trees and considers that a requirement should be added requiring implementation of replacement trees if tree establishment fails, beyond the initial 5 year period. A requirement has been included in the Appendix• Article 27 time: limit for the exercise of CA powers – 8 years from disposal of any legal proceedings is unprecedented and unjustified by Applicant’s response at D2 (which appears to suggest it is driven by the length of the construction period). Funding and detailed design are the usual drivers, and it is not clear why either is a particular issue in this case. An amendment to article 27 is shown in the Appendix.• Article 56(3), (4) planning permission etc.: GBC requested a list of existing planning permissions which the Applicant considers may benefit from this provision but none was provided at D3. GBC simply wish to know the effect of the article in its area before endorsing it.• Art 58(2) (defence to proceedings for statutory nuisance) appears to be unprecedented in highways DCOs. It says that compliance with the controls and measures described in the Code of Construction Practice or any environmental management plan approved under paragraph 4 of Schedule 2 to the DCO will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided. It represents an unwelcome intrusion on the court’s discretion. At D3 GBC asked whether the absence of this provision (unprecedented in highways DCOs) has caused difficulties in other cases. At the very least GBC would ask that the ExA draw the attention of the SoS to the	
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	<p>unprecedented nature of this provision. An amendment to article 58 is shown in the Appendix.</p> <ul style="list-style-type: none"> • Art 61 (stakeholder actions and commitments register). The point here, also taken by Havering is that it is inappropriate to say that the Applicant will only “take all reasonable steps” to deliver the commitments in the register. The commitments themselves might require a greater burden on the Applicant (ie an unqualified “the Applicant will....”). This would water that down. An amendment to article 61 is shown in the Appendix. • Art. 65(1)(d) (appeals to Secretary of State against Control of Pollution Act notices, rather than to magistrates): the Applicant has not properly explained why it considers it appropriate for appeals to be dealt with by the /ss rather than the magistrates. The Applicant has listed national figures about court delays as its justification for this unusual provision. It gives no local figures. An amendment to article 65 is shown in the Appendix. • Schedule 2, paragraph 20: time limit for responses to consultations in requirements; GBC considers this should be extended to 42 days from 28, given the number of applications that may be received, possibly in close proximity. An amendment to article 65 is shown in the Appendix. • A number of other amendments which follow up on points made by GBC in previous representations have also been included in the Appendix. 	
4. Next Steps		
5. Closing		

